

INFORMATION SHEET  
 DETERMINATIONS OF NO JURISDICTION FOR ISOLATED, NON-NAVIGABLE, INTRA-STATE WATERS RESULTING  
 FROM U.S. SUPREME COURT DECISION IN SOLID WASTE AGENCY OF NORTHERN COOK COUNTY  
 V. U.S. ARMY CORPS OF ENGINEERS

DISTRICT OFFICE: Philadelphia

FILE NUMBER: CENAP-OP-R-200600191

REGULATORY PROJECT MANAGER: Bryan P. Bellacima Date: February 16, 2006

PROJECT REVIEW/DETERMINATION COMPLETED: In the office \_\_\_\_\_ (Y/N) Date: \_\_\_\_\_  
 At the project site \_\_\_\_\_ (Y/N) Date: 2/17/2006

PROJECT LOCATION INFORMATION:

State: DE

County: New Castle

Center coordinates of site by latitude & longitudinal coordinates: 39-34-53.4/ 75-43-16.4

Approximate size of site/property (including uplands & in acres): 190 +/- acres

Name of waterway or watershed: Belldown Run/ Delaware River

SITE CONDITIONS:

Type of aquatic resource <sup>1</sup>	0-1 ac	1-3 ac	3-5 ac	5-10 ac	10-25 ac	25-50 ac	> 50 ac	Linear feet	Unknown
Lake	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
River	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stream	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dry Wash	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mudflat	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sandflat	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Wetlands	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Slough	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Prairie pothole	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Wet meadow	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Playa lake	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vernal pool	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Natural pond	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other water (identify type)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

<sup>1</sup>Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

Migratory Bird Rule Factors <sup>1</sup> :	If Known		If Unknown Use Best Professional Judgment		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able To Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Is or would be used as habitat by other migratory birds that cross state lines?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Is or would be used as habitat for endangered species?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Is used to irrigate crops sold in interstate commerce?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<sup>1</sup>Check appropriate boxes that best describe potential for applicability of the Migratory Bird Rule to apply to onsite, non-jurisdictional, isolated, non-navigable, intra-state aquatic resource area.

TYPE OF DETERMINATION: Preliminary ☐ Or Approved ☒

ADDITIONAL INFORMATION SUPPORTING NJD (e.g., paragraph 1 – site conditions; paragraphs 2-3 – rationale used to determine NJD, including information reviewed to assess potential navigation or interstate commerce connections; and paragraph 4 – site information on waters of the U.S. occurring onsite):

**The site contains fallow upland open farm fields, wooded uplands, Palustrine forested wetlands (PFO), some Palustrine emergent wetlands (PEM) four unnamed tributaries with adjacent wetlands, and man-made ditches, channelized streams, and five Federally non-regulated, isolated PFO's.**

**The isolated wetlands (J, K, M, N, R) (1.75 acres total) exist a minimum of 600 to 1,000 linear feet from any waterway, and are not hydrologically connected to any tributary. The wetlands in question do not have any noticeable biological, chemical, or habitat relationships to a tributary/waters of the U.S., and are not considered adjacent (neighboring) to any watercourse.**

**As noted, the wetlands are not navigable in-fact ( heavily vegetated, and have no permanent ponding of water), and have no potential for Interstate or Foreign Commerce (cannot be used by interstate or foreign travelers for recreation or other purposes, no fish or shellfish could be taken and sold in Interstate or Foreign Commerce, and not used for industrial purposes in Interstate Commerce). Therefore, the wetlands are isolated, intrastate wetlands with no nexus to interstate or foreign commerce. As such, the wetlands are not Waters of the United States, pursuant to 33 CFR Part 328.3, and not subject to Section 404 of the Clean Water Act.**

**The man-made upland drainage ditch is vegetated with upland plant species, does not contain an Ordinary High Water mark, does not extend to a tributary (isolated), and is not part of a surface water tributary system (328.3 (a)(5)). Therefore, the ditch is not a Waters of the United States, pursuant to 33 CFR Part 328.3, and not subject to Section 404 of the Clean Water Act.**

**See enclosure 1 (Jurisdictional Determination Checklist) for information concerning the Federally regulated waters and wetlands on the site.**